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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,375	01/10/2002	John Lawrie	14263	8264
25763	7590	05/04/2004	EXAMINER	
DORSEY & WHITNEY LLP INTELLECTUAL PROPERTY DEPARTMENT 50 SOUTH SIXTH STREET MINNEAPOLIS, MN 55402-1498			PASCUA, JES F	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/044,375	LAWRIE ET AL.	
	Examiner	Art Unit	
	Jes F. Pascua	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/11/04 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 8, 11, 12, 15, 16 and 20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lane, Jr. et al.

4. Claim 21 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hardy et al.

The recitation, “for storing juice product” has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a

self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Furthermore, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

5. Claim 21 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rinfret. See Fig. 3.

The recitation, "for storing juice product" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Furthermore, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

6. Claims 22, 24, 25, 28, 31, 32, 34, 36, 37, 40, 43, 44 and 46 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Bell '177. See Figs. 6 and 7.

As a note, the seal 73a of the internal end in Bell '177 is formed by the same method used to seal the first surface to the second surface in region 73.

Furthermore, the seal 73a of the internal end in Bell '177 is formed by the same method used to seal the first surface to the second surface at seams 59, 60 to the degree that seal 73a and seams 59, 60 require heat and pressure to be formed.

Nothing in applicant's specification precludes the use of peel seal tape to form the seal of the internal end of the Bell '177 column. In subsection 4 of applicant's "REMARKS", filed 03/11/04, "the pouch perimeter seals 13 and piercing point 24 are formed by the same heat sealing method (i.e., heat sealing at the same temperatures, pressures and time periods)." Column 10, lines 64-67 through column 11, lines 1-2 of Bell '177 contemplates applying heat and pressure to panels of the pouch where the peel seals and permanent seals are to be formed. The application of heat and pressure by Bell '177 in this instance meets the recitation, "the seal of the internal end is formed by the same method as the seal used to seal the first surface to the second surface", to the degree that applicant has defined the metes and bounds of "the same method".

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-5 and 7-23, 25-30, 33-35, 37-39, 41, 42 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell '177 and Hardy et al.

Bell '177 discloses the claimed device except for the column including parallel first and second seams. Hardy et al. discloses that it is known in the art to provide parallel first and second seams in an analogous column. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the column of Bell '177 with the parallel first and second seams of Hardy et al., in order to guide the piercing means to the sealed point.

Regarding claims 8, 20, 27 and 39, Bell '177 and Hardy et al. disclose the claimed device, as discussed above, except for the column including a second, frangible seal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the column of Bell '177 with a second, frangible seal, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claims 1, 15, 29 and 41, Bell '177 and Hardy et al. disclose the claimed invention, as discussed above, except for the column being tapered so as to be wider at the internal end. it would have been an obvious matter of design choice to make the column of Bell '177 such that is tapered to b wider at the internal end or whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. Neither Bell '177 nor

Hardy et al. explicitly state that a column being tapered so as to be wider at the internal end is neither required nor desired.

Regarding claims 7, 17, 30 and 42, Bell '177 and Hardy et al. disclose the claimed invention, as discussed above, except for the column extending beyond the seal of the internal end. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the seal of the internal end in the Bell '177 column such that column extends beyond the seal, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Regarding claims 13, 19, 33 and 45, Bell '177 and Hardy et al. disclose the claimed device, as discussed above, except for the pouch having a removable portion covering the exterior end of the column. Hardy et al. discloses that it is known in the art to provide a removable portion over the exterior of an analogous column. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the exterior end of the Bell '177 column with the removable portion of Hardy et al., in order to maintain the integrity of the column prior to receiving the piercing point.

Regarding claim 21, Bell '177 and Hardy et al. disclose the claimed invention, as discussed above, except for the panel of the compartment being formed of a multi-layer laminate. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use multi-layer laminate for the panel of the Bell '177 compartment, since it has been held to be within the general skill of a worker in the art

to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claims 23 and 35, Bell '177 and Hardy et al. disclose the claimed invention, as discussed above, except for the first and second surfaces being part of a single panel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a single panel to form the first and second surfaces of Bell '177, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

Response to Arguments

9. Applicant's arguments with respect to claims 1-5 and 7-46 have been considered but are not persuasive.

In response to applicant's argument that Hardy et al. is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Hardy et al. is reasonably pertinent to the particular problem with which applicant is concerned. Hardy et al. addresses applicant's need for a barrier that is easily pierced by a tube by providing a passage 20 that guides the tube toward the bag compartment.

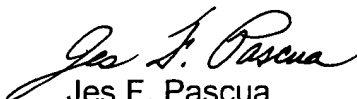
Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 703-308-1153. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jes F. Pascua
Primary Examiner
Art Unit 3727

JFP